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## 'Human rights' or 'property'? : state, society, and the landless in South Africa

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## **" 'Human Rights' or 'Property'? State, society and the landless in South Africa"**

Paper presented at Max Planck Institute workshop "The landed and the landless: strategies of territorial integration and dissociation in Africa", May 27-29 2002.

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### **Abstract**

*This paper explores the interlocking – but sometimes contradictory - efforts of NGOs and the state to safeguard the rights of those who have no land. "The landless" in South Africa, categorised along with "the poor and the dispossessed" by those who advocate their cause in the NGO sector, have come to occupy a contested position. As government policy has come increasingly to favour those who are structurally counterposed to "the landless" - the better-off who are potential commercial farmers - so NGO efforts have been directed, correspondingly, to safeguard the interests of this apparently large, but bewilderingly heterogenous, category.*

*While those in this sector are agreed on the importance of helping "the landless, the poor and the dispossessed" by providing them with access to protected land rights, there has been disagreement over where the members of this category are to be found, and how their security can be best safeguarded. Countering the position that this is best achieved through "tenure reform" in the former homelands, some argue, for example, that those most in need of security are the labourers on white farms, whose residence rights are tied to their employment and for whom dismissal would mean instant homelessness. Recent "land invasions", such as the one at Bredell near Johannesburg, are also incorporated into the discursive universe of "landlessness" although their protagonists appear to belong to a further category: urban-based squatters seeking access to land without the payment of rent or services. This paper highlights the complex interlocking rhetorics emanating from, and protecting the rights of, these different constituencies, as they converged at the recent "Landlessness equals Racism" conference which was held alongside last year's UN conference on Racism.*

### **Introduction**

To investigate the plight of the "landless" implies an understanding of how the "landed" maintain their position (and hence of how the "landless" might eventually come to alter theirs). Although the difference between these two opposed statuses vis-à-vis land may seem obvious, the realities are far more complex. And if, as is the case in many African contexts, being "landed" encompasses a wide variety of actual social positions, being "landless" implies an even wider divergence. In particular settings, such as that of former colonies characterised by sharp inequalities of wealth and property, it may be that securing land for a formerly dispossessed group automatically poses a threat to those who formerly held the monopoly on it. This has certainly been the case in Zimbabwe, whose daily drama of possession and dispossession has been played out on the media. Whatever the complex realities of the situation, the story as witnessed by the world has pitted those who formerly

imagined their property rights to have been secure against those who were formerly property-less.

Not all formerly colonial settings in Africa have been the site of such a violent transformation from “landless” to “landed”, however. In South Africa - where the “agrarian situation” and hence its attempted transformation have been described as “extreme and exceptional” (Bernstein 1996) - the existence of a constitutional state underpinned by the rule of law has been an important factor in mediating between the landless and the landed during the years of transition. Particularly important in establishing and regulating land access – like access to many other resources in the new South Africa - has been the language of rights (Wilson 2000). It is “rights” which have been seen as crucial in allowing the landless to overcome their plight by allowing them to reside on and use land which they do not necessarily own. At the same time, “rights” have to an extent secured the existing property regime, thus protecting – so far – against unbridled land invasions of the kind seen in Zimbabwe.

But the South African state does not enjoy a monopoly on designing constitutions, deploying the language of rights, or planning the future of the land, any more than it monopolizes the other functions thought of as being the preserve of states. Rather, it is in the course of contestations *between* the state and society, and also *within* the ranks of society, that ideas about how to secure the rights of the landless have been hammered out. This paper deals in particular with relationships between the state and those who have been active in the NGO sector. Although this sector is often thought of as co-terminous with “civil society”, it has in South Africa been arguably more “political” than “civil” in nature. As well as playing a key role in the design of the constitution and – closely linked - of the land reform program as will be described below, it also acted as an effective training-ground for the civil service of the “new” South Africa, performed a range of state-type welfare functions prior to 1994, and has resumed such functions under the present dispensation.

Such contestations about rights have served both to blur the boundaries between state and the NGO sector, and to sharpen certain lines of definition within that sector, creating new kinds of conflict within it as certain actors align themselves with national policy while others contest it. Disputes have occurred at national and regional levels, and have also had repercussions in the international arena where Third World social movements attempt to bypass the influence and impact of the

nation state altogether (Fisher 1997:440-1). Although the law and ideas about the rule of law have played a key role in these disputes, they have been more than dry legal quibbles over technicalities. At issue have been key questions about the nature of public morality, the division between the public and the private, the entitlements and obligations of citizenship, and who has responsibility for the welfare of the poor. All these weighty civic debates have centred on the possession – or the lack - of “land”.

### **Landlessness as social movement**

The sheer scale of what is considered to be the ranks of “the landless” could be seen at a workshop, held in Durban in August 2001 alongside the UN Conference on Racism. The workshop, entitled **Landlessness = Racism**, was organised by the National Land Committee (NLC) as part of its attempt to foster the landless people’s social movement, whose absence in South Africa so far has both puzzled activists and been lamented by them.

The new intention of land rights advocates, as embodied at the workshop in question, was to give strength to this particular movement by linking its own narratives of dispossession to the solutions taken up by similarly deprived – but more resolutely activist – movements elsewhere. Encamped around the perimeters of a rugby field, a series of large marquees gave overnight shelter to scores of people from a range of different land-claiming groups who had arrived in coach-loads from every corner of South Africa. During the two days of the workshop, they sat listening to testimonies from those of their number who had been charged with the task of representing the plight of their fellows. Between speeches, they were enjoined by NLC organisers to reply in unison to new modifications of the familiar “struggle” call-and-response calls. In reply to the call “*Amandla*” (power), instead of the old “*awethu*” (to the people) they were encouraged to reply “*intifada*”, thus identifying their cause with that of the landless Palestinians. In similar vein, “*phanzi* Israel *phanzi*” called for the downfall of the Palestinians’ oppressors rather than of some more local, and familiar, adversary.

There were those in the movement who commented later that the effect of this globalisation of the plight of South Africa’s landless had been to turn it into a kind of circus: the presence of Palestinians, Guatemalans and Native American elders had diffused the urgency of South African landless people’s specific

grievances, and prevented these from being seriously reported in the press.<sup>1</sup> But the intention was clearly that these grievances be ennobled, and that those holding them be brought together, by linking them to trans-national ones of a similar type. Despite the unifying intentions, however, it is undeniably the case that the “landless people” in this social movement encompass an extraordinary variety, and that it may be this variety that has inhibited the movement’s effectiveness so far.

My earlier discussions with activists in the NLC had revealed just how important the encouragement of this movement was as a new focus for their activism. In retrospect, they saw as flawed their earlier attempts to foster similar alliances, since these had been led, or high-jacked, by elites, rather than being truly owned by the poor whom these activists felt to be the proper constituents of a landless movement.<sup>2</sup> Yet several of the land-claiming stalwarts who, in emotive and evocative terms, addressed the workshop about their frustration with government delays, were indeed – at least in relative terms – members of an elite. The headmaster from Louis Trichardt, for example, has an urban residence and secure employment and is a member of what has been termed the “African middle class”. His “landlessness”, although pressingly urgent in his eyes, was a matter of sentiment more than one of immediate survival. Having stemmed from apartheid-era black spot removals, the loss of his community’s land, like that of many similar groups, would have to – and ultimately might – be ameliorated by the state’s eventual restitution of title to those from whom it had been taken by apartheid’s ideologues.

In contrast, the kind of people at whose “landlessness” the NLC was attempting presently to target its efforts were those who had never before held formal rights to property. Even within this more narrowly-defined group, there was a sense of considerable ambiguity about the precise social attributes of the “landless”. One speaker evoked the plight of African farmworkers on white farms, for whom the insecurity of being evicted from one’s home at the end of a working life was a guarantee of a destitute and impoverished old age:

We want bread. We cry this again and again, but nothing happens. The government takes no notice. Our farmworkers are still being chased away. You work until you are 60 years old, then you must go. Government people must go to these white farmers, dressed in ragged clothes, to look for work. Then they will know how we feel.<sup>3</sup>

The threatened eviction of farm workers, however, has been notoriously invisible to those in government since around the time of the inauguration of Thabo

Mbeki and the installation of his new cabinet in 1999. Rather, what had raised the profile of “landlessness” in the month immediately prior to this workshop, with resonances still ringing in many of the speeches, was the land invasions which had just occurred – and been summarily dealt with by the state - at Bredell on the outskirts of Johannesburg. Newspaper reports on the invasion had drawn parallels with Zimbabwe, and had highlighted the determination of the ANC government not to tolerate such illegal actions. The incident had also prompted a fierce debate amongst the provincial affiliates of the NLC during the weeks leading up to the workshop, with some pledging moral support and advice to invaders while others stressed the need to retain a close relationship to the state and hence to condemn all illegal actions.

That the “invasion” motif was close to the heart of “landless” people was obvious from several of the addresses at the workshop and from the crowd’s response. But the resonance of this motif, like that of “landlessness”, disguised considerable disparities in social background amongst those it yoked together. Although it was the Bredell invasion that had highlighted the urgency of the “land” problem, none of its protagonists was in fact present to address the workshop. Those speakers present who *had* illegally occupied land - and were vociferously alerting others to the necessity of doing so themselves if the government failed to give it back - were mostly those who had filed claims to have their former, confiscated, properties returned, and hence belonged to those, like the headmaster, whose claims to “restitution” would presumably eventually be addressed through the land reform program. Accompanied by waving banners bearing the slogan “you promised us land and you gave us jail”, a representative of the people who had illegally moved onto their former land at Groot Vlaktefontein in the Northern Cape addressed the crowd:

We lodged a claim, procedurally. We waited three years for the government, they said “we are validating, we are validating”. Then we took action. People should go to their land and occupy it ... not “invade”. We cannot “invade” the land that is rightfully ours.

The President, in a recent speech, had attempted to discredit such occupations by stressing how different they were – in personnel and intention - to earlier waves of anti-apartheid resistance within South Africa. In response, speakers emphasised the

trans-national theme of the workshop, validating their struggle by highlighting the continuity between such occupations and similar ones elsewhere in the world:

President Mbeki says that the people who are protesting, and invading land, are not those who suffered in the struggle. But we are in the struggle now, and the struggle is not yet over. The struggle continues. Our struggle for land is the struggle that is happening in other parts of the globe.<sup>4</sup>

But despite the readiness of workshop participants to appropriate the recent peri-urban “land invasions”, such as the Bredell one, as a means to strengthen the muscularity of the “landless” and of their response to state ineffectiveness or hostility, it was clear that this occasion was serving to voice the opinions of people claiming land more in a rural than in a peri-urban setting. It was, then, those whose membership of the “landless” category would appear most self-evident who were making their voices heard here.

What the various “landless” had in common - what had brought them together in this workshop and what, if anything, would ensure the unity of their social movement - was that all had been assured that they belonged together within the government’s programme of land reform, and that all were experiencing frustration at the state’s inability, or unwillingness, to act.

In the sense that they had been united by this “single interest” rather than by some commonality of class background or of broader social circumstances, they conformed exactly to the definition of a social movement, in which one uniting feature overrides other differences. But if people as diverse as headmasters and farm labourers were joining together on the basis of a motif at once as emotional and as undefined as land (and state inaction over land), the means to overcome their dissatisfaction would certainly have to be as varied as its diverse causes.

To understand the full social and economic range of those gathered together at the workshop – those whose landlessness the land reform program was designed to address - it is necessary to briefly examine the origins and intentions of this program, the way in which its “beneficiaries” were first conceptualised, and how it has shifted since its inception.

### **Unity in diversity: the land reform programme**

From the outset, land reform had a high profile in the plans of those in South Africa's liberation movement who were gearing up to take their places in the new government. This was, in part, because of the way it combined the aim of restoring citizenship with that of ensuring economic progress for the poor. Land reform, in attempting to offset the redress of specific past injustices against the fulfilling of demands for broader socio-economic redistribution, was to constitute a central part of the planning which underlay South Africa's transition from an apartheid to a constitutional state.

If it was seen as crucial in restoring citizenship, this is because of its earlier centrality in the denial of citizenship. In the planning of apartheid's ideologues, a system of customary tenure, closely allied to indirect rule, was intended to make communally-held property, in separate ethnically-defined territories, the basis of political dependency upon chiefs for the African population (Mamdani 1996:21-2). It was this system which laid the foundation for the definition of rural Africans as chiefly "subjects" rather than as citizens able to engage with civil society. As endorsed within the grand plans of apartheid, formulated and refined during the 1950s, this system of tenure "mapped the social landscape" according to a particular conception of the innate relationship of "people to place" (Ashforth 1994:158). A favouring of communal tenure over privately-owned property thus lay at the heart of apartheid's "decentralized despotism" (Mamdani 1996:15).

If apartheid was a system which denied citizenship, or assigned it on a second-class basis through a planned relationship of "people to place", then its undoing required the uncoupling of this relationship, and the healing of the sharp divisions which it implied. In planners' constitutionalist vision for the new South Africa (Wilson 2000), citizenship has been explicitly linked to the project of overcoming the past (Enslin 2000). The drafters of the new constitution saw land as central in defining the rights that had formerly been denied, and its restoration as a means to restore those rights and with them the sovereignty and full citizenship of the African population (du Toit 2000, Ramutsindela 1998). The intention to restore land to its former occupiers thus amounted to a reinstatement of basic civil liberties which had been removed, or denied, in the past: but it was also seen as assuring the rights of such people – and especially the most poor and vulnerable – to secure residence in the future.



The importance of this line of thought, due in part to the prevalence of human rights lawyers amongst those developing it, was such that it initially enshrined a language of “rights”, especially “land rights”, rather than one about “property/ownership” at the heart of debates about reform. But a second, and increasingly important, line of argument has foregrounded the economic benefits to be gained from secure ownership of property. The two approaches were linked in the early years of the land reform program, which drew many former NGO officials into state employment. But the government’s subsequent shift towards more explicitly neo-liberal economic policies has seen the rights-based approach decoupled from the property-based/economic one, with a tendency to favour the latter. Attempts to foster a land-owning, middle-class African farming constituency are now paramount, eclipsing the previous emphasis on safeguarding the basic residence rights and welfare of the “rural poor” – “the landless” - through land redistribution or tenure reform (Cousins 2000, Williams 2000). With this altered direction and the substitution of personnel which accompanied it, a number of former NGO activists and human rights lawyers, having briefly worked in state employment, have once again rejoined the NGO sector. Here they are using legal means to challenge the government, in order to enforce the more egalitarian vision of the land reform program’s priorities. Ironically, having first designed the programme, they are now amongst its sharpest critics.

One can see, in this brief overview, how a plan originally conceptualised as dealing with a diversity of priorities within a single overarching strategy has proceeded to unravel into separate strands, and how state and civil society have become increasingly divided over which of these strands should be prioritized. Underpinning this originally coherent master-plan, but responsible in part for its increasingly contested nature, is the extraordinary complexity of social categories, together comprising the “rural landless”, whose experienced injustices it was intended to redress and whose land needs – and, ultimately, welfare - it was designed to satisfy.

The plan, although presented in cohesive terms, did include some acknowledgement of this complex diversity by subdividing its intended activities into three categories. It was in the process of this subdivision, into restitution, redistribution and tenure reform, that matters of property and the actual means for its transfer received more detailed attention. The first, restitution, would concentrate on

returning land to those who had lost it during the apartheid era (though, controversially, the Restitution Act was phrased so as to render more far-reaching claims, situated further back in the past, illegitimate). The second, redistribution, would allow for those Africans who had never had secure claims on landed property to group together and purchase farms with the aid of a government grant. It was this strand, intended to benefit such people as “the landless poor, labour tenants, farm workers and emerging farmers” by “improving their livelihoods and quality of life” (DLA 1997:36), which increasingly came to appear the only way of transferring really significant amounts of formerly white-owned land to the “historically oppressed” (Lahiff 2001). The third strand, tenure reform, was intended to protect “the rights of residents of privately-owned farms and state land”, and to “reform the system of communal tenure prevailing in the former homelands” (*ibid.*, see also Makopi 2001:144): that is, it would safeguard the rights of those who were unable to become owners of securely-owned land, by ensuring that they could not be summarily evicted from their existing places of residence on farms on in the former homelands. The subdivision into these separate strands, although based on the divergent historical and social origins of the “landlessness” of each category of intended beneficiaries, contained an implicit analysis of the legal means by which property would be transferred and of the eventual status, in property terms, of those who would eventually be “landed”.

Inevitably, as with many other policy-makers’ categories inappropriately imposed on a local populace, the separate kinds of land claimants for whom these three subdivisions were originally designed have often been intertwined in practice (Murray 1996; Lahiff 2000). Restitution, aimed at former property owners who mostly lived outside the reserves, has been deployed as much to reinstate apartheid’s reserve-dwelling victims, while redistribution has served as a means to claim restitution by those whose dispossession occurred before the official 1913 “cut-off date”.<sup>5</sup>

There is a further intertwining of social categories which this subdivision obscures. A programme of land reform based on a subdivision between “urban” and “rural” people, and designed to benefit the latter, tends to obscure the intricate interconnections between rural and urban forms of identity which have resulted from South Africa’s exceptionally rapid transition to capitalist industry and agriculture (Bernstein 1996:41). Many Africans “partly” domiciled in the rural areas have also

had experiences as members of the unionized workforce, supporters of urban-based political parties, Christian town-dwellers, and occupiers or even owners of urban property. Whatever tenure rights they possess or property claims they make within their country domiciles must be – but have not been, by the land reform programme – assessed in relation to town-based shifts in property relations and residential arrangements which affect them as urban wage-earners (James 1999).

Policy subdivisions such as these – admittedly made in the interests of efficiency in order to facilitate a division of labour within the state – thus tend to disregard long-term social, economic and historical processes. They ignore, for example, how more than a century of rapid social transformation, together with the legislation designed to control it, has produced an extraordinary proliferation of different, but intricately interrelated types of landholding. Since well before 1913, Africans have been moving from tenancies on white farms to freehold black-owned land, from freehold to reserve, and sometimes back to white farms again, while “tribes” under chiefs have occupied land *outside* of the communal or homeland areas at the same time as individuals freed of chiefly fealty have been purchasing freehold *within* them (Beinart 1994:19; Francis and Williams 1993; La Hausse 2000; Murray 1992).

The point made here can be more simply summarised. The general ideological thrust of the land reform programme has encompassed a broad vision of restored rights, sovereignty and citizenship for the African population, informed by the prevalence of human rights lawyers in drafting the constitution and in setting up the programme itself. At the same time, its detail embodies a series of subdivisions: most fundamentally between urban and rural, but extending also to separate those with more visible and obvious (former) rural land rights from those rural dwellers with few apparent rights of any kind. These subdivisions attempt to separate what is in fact inseparable.

This point amounts to a general critique of policy-makers’ plans: one which could apply equally well in many contexts. In the interests of effective social action, the confusing flux of social life must be categorized: but doing so necessarily limits the flux and distorts the true – and perhaps ultimately uncategorisable – nature of social reality. But what is of interest for the present paper is to examine how a particular grouping, within the confusing ranks of “the landless” outlined above, has come to occupy centre stage in the fierce debates between state and the NGO sector,

and has, as an idea if not as an actual social group, become a central protagonist of the social movement discussed earlier.

### **State, NGOs and the “land question”**

Understanding this process is inseparable from an examination of the fiercely contested social space encompassing – but also dividing - state and NGOs in South Africa.<sup>6</sup> As the division has widened between those (now in state employ) who have increasingly prioritized the nurturing of a landed African class and those (now outside of it) who with increasing vociferousness champion the rights of “the landless”, so these groups of actors, for a short while almost indistinguishable in the heady and utopian period just after the 1994 election, have discovered ever more divisive ideological justifications for their divergent positions. At the same time, however, these separate groups frequently find themselves having to work together in a series of uneasy coalitions.

NGOs have played an important role in South African society: one which has always tended to combine loftier concerns such as the challenging of injustice and the defence of rights with the more apparently humdrum provision of practical assistance. During the last two decades of the apartheid regime, a series of organisations, mostly funded by foreign donors, came into being. Alongside their ideological opposition to state injustice, many ensured the provision of a series of services which ought by rights to have been done by the state. Among the most active of these were a series of “land NGOs”, originating in the need of communities threatened with resettlement to defend themselves from state action. And in great demand by those in the “land NGOs” seeking to counter such actions by the state was the expertise of those in one “legal NGO” in particular - the Legal Resources Centre (LRC).

When, after 1994, the newly-oriented Department of Land Affairs was charged with implementing the land reform programme, it needed a range of new staff, and many of those it took into its ranks had gained their initial experience in matters of land through their work in the land and legal NGOs. It was the high profile of these people within the programme that gave it its initially strongly “rights-oriented” character. This, in turn, is seen as having been a reaction to, but also a result of, the fact that apartheid South Africa had in turn been “quite self-consciously a legal order” in which ‘nothing was done without legal authorisation, from removals

to detentions ... It was a way of ensuring that government functioned as a single line of authority' (Martin Chanock, quoted in Palmer 2001). This suggests that, despite the novelty of the brief which this department had now undertaken, there were some strong continuities with earlier practice: a preoccupation with law by the dispossessors was being matched by a similar preoccupation in the hands of those now championing the dispossessed.

Some light was thrown on these continuities when I interviewed Geoff Budlender, a key figure in the transitional moment which brought NGO personnel into the government. Having directed the LRC until 1994, he now became Director-General of Land Affairs under Minister Derek Hanekom. Questioned later about the inordinately legalistic nature of the new Department's activities after 1994, he defended the rights orientation:

We said from the beginning we'd take a rights-based approach, because several influential people in the process were coming at it from a rights angle. We wanted to create rights wherever possible. This was a good decision: one needs something secure that people can hold onto. At times I thought we were overdoing it, and I tended to be softer on the legislative side. But I was wrong – people need rights to be able to hold government to. Rights set standards and provide an overall framework.<sup>7</sup>

Although admitting that there had been criticisms of the excessively complex new laws, with their endless sub-clauses inserted "to cope with various eventualities", he pointed out that the real test – and vindication – of the "legal" approach came when, after the 1999 elections, he and most of his colleagues were replaced by a new battery of officials hand-picked by the new Minister:

It's true that we over-legislated, but ... people do need firm rights. For example, under the Tenure Security Act, there was a provision which said "The Minister may make part of the farm available for worker ownership". There was a dispute over whether the "may" ought to have been "shall". The legal adviser said we ought to make it "may", then there was a big fight about it. The "shall" won. And now the new Minister has closed down the programme. We were right to stick with "shall" – the "shall" will make a big difference now that the policy has shifted. One needs a hook, a definite point of reference, and the law can provide this.<sup>8</sup>

As Budlender and many of his colleagues moved back into the NGO sector after their brief five years in office, they thus found themselves in a strange position. Pre-1994, the LRC had used its legal muscle to challenge the apartheid state on its intent to shift the African population around the countryside. Now, post-1999, it

would be using that muscle to hold the post-apartheid state to the laws its activists had passed whilst briefly occupying state positions and holding state portfolios. Of these laws, those now seen as most significant were the ones intended to secure especially the most vulnerable parts of the African population within those country areas to which they had been scattered. It was at this point, post-1999, that activists started directing their energies, in particular, to safeguarding the informal rights of “the landless”: rights which had never been recognized and which would be difficult to enforce.

Continuities with the former regime existed on levels as well. Some of these were sufficiently strong, during the 1994-99 period, to inhibit the achieving of the new programme’s goals. At levels below that of the senior office-holders, the Department was still staffed and run by a battery of administrators inherited from the apartheid regime. It was these administrators, according to one-time restitution officer in the Department, Tony Harding, who were unwilling to bend to the authority – or share the egalitarian vision - of their new masters:

Land reform was different from what they were used to doing. ... They had inherited attitudes to these communities and could not conceptualise a different framework, or think that people might behave differently. They believed that our policy was one which was designed to facilitate “squatting”, as they called it. They were only interested in dealing with people who *owned* the land. They had a bias towards title and private property, so they easily understood claims in which people had actually owned property beforehand, but not the ones ... involving former labour tenants and rental tenants who had been removed from the land.<sup>9</sup>

Harding considers the reluctance of these officials to help in securing the rights of those whom they saw as “squatters” (corresponding with the narrower definition of “the landless” in this paper), to have been an important factor in the much-decried “failure” of the programme to deliver on its initial promises during the first five years of its existence. (Other factors cited have been the Department’s minuscule budget – though critics point out that this was underspent in any case – and the fact that its first minister post-1994 was a relatively junior person enjoying far less influence within the ANC than his more experienced counterparts who had come back from exile.)

The disdain of these apartheid-era administrators for “squatters” and non-landowners points towards a further continuity of ideology which was to become consolidated after the new Minister, Thoko Didiza, took office. Here, several

commentators have remarked on a key irony. It was the previous, white, minister, Derek Hanekom who was happier travelling to the countryside to visit landless communities than sitting in his office. In contrast, his African successor, Thoko Didiza, sympathising less with “the landless” than with those, like her own family, who had owned land, felt more at home among the African middle class or in the company of chiefs, and rarely spent any time visiting rural communities. Referring to the change in leadership and in personnel, some analyzed the post-1999 change in the Department as one in which a “race” conflict had taken place. But other commentators preferred, instead of looking at the shift in departmental personnel, to refer to the changing constituency which the Department in its earlier and later incarnations had seen itself as serving: thus analyzing it as a conflict of “class”.<sup>10</sup> Whichever of these is most accurate, many people pointed to the parallel between the disregard for the rights and wellbeing of “squatters”, manifest among older Afrikaner officials, and a similar indifference to their plight by those working under the new minister. (They included these apartheid officials, who had simply “stayed on” through all these changes)<sup>11</sup>.

A further continuity between old and new was to be found in a preoccupation with spatial planning. If South African blacks have been victims of a “quite extraordinary degree of planning” in the 20<sup>th</sup> century (Crush and Jeeves 1993), then an equal preoccupation with the spatial locating of the populace can be discerned in many post-1994 policy debates concerned with *undoing* apartheid’s spatial plans via the land reform programme (Makopi 2000:145-6). The resources deployed now, in character although certainly not in scale, match those deployed earlier, especially if one looks at the level of involvement of professional planners. Ironically, many of those now serving the state as planning consultants are the very same people who worked for the apartheid government!<sup>12</sup> Although the propensity of the South African state to construct and carry out elaborate plans for the geographical placing of people is thus usually seen as motivated primarily by its racist ideology, such inclinations have been present post-apartheid as well. Indeed, they appear to be shared by states everywhere (Scott 1998), and have been embraced as well, in this case, by those in the NGO movement.

But a simple observation, and listing, of continuities between the staffing and ideology of the state in pre- and post-apartheid South Africa is not sufficient to demonstrate the key point I want to make here. While there is a growing division

between the advocates of the landed (many of whom are in the state) and those of “the landless” (increasingly seen as the preserve of the NGO sector), this division is also and simultaneously an interrelation, particularly at the provincial level. On the one hand, the land NGOs see their role as one of challenging the state, moving it beyond what has come to be seen as its narrow, even Thatcherite focus on the entrenching (or restoring) of property rights. On the other, however much these activists may want to commit themselves primarily to championing the informal rights of the poor, they are compelled by the insistent demands of their many constituents, and by financial considerations, to work in parallel, or even hand-in-hand, with the Department of Land Affairs. In a few cases, this type of close collaboration has been facilitated by strong personal networks which continue to exist between provincial-level state and the NGO sector (and the more radical-leaning NGOs are critical of their brethren for being thus compromised). Indeed, in another interesting parallel with the apartheid era, NGOs often take on what should be the duties of the state. In the case of land claims, these involve guiding communities through each of the complex, and onerous, phases of the land-claiming process before the seal is finally set on each claim.<sup>13</sup>

### **Landlessness revisited: the case of “tenure reform”**

Despite some degree of co-operation on practical matters, the ideological and social rift over the question of “landlessness” remains, and appears to be growing wider. The attention of the NGO sector has focused increasingly on those whose insecurity of tenure was intended to be – but never effectively was – addressed within the original programme: primarily through “redistribution” and “tenure reform”. Put differently, these are the “squatters” about whose rights the DLA administrators, and the new Minister, appear to have been so indifferent. Of these two, it is a particular initiative within the rubric of “tenure reform” to which I will give some attention in the next few pages: but the other aspects also require some brief discussion.

Redistribution soon became one of the primary sources of contention within the programme, primarily because of its having been combined with a type of government grant which could be accessed by each family (Settlement Land Acquisition Grant – SLAG) and, controversially, with a “willing buyer/willing seller model” originally proposed by the World Bank. This arrangement required the pooling of resources in order to make any effective land purchase, and led, in many



cases, to the recruiting by elites of new settlers purely on the basis that their grants, once combined, would allow for the acquisition of a suitably-sized farm. Such strategically-mobilised groups, which have been derogatorily described as “rent-a-crowds”, often found it was unsustainable to live on the land to whose purchase they had contributed: it would then revert by default to the original initiator. Whether or not because of this controversy, the new Minister soon placed a moratorium on all new redistribution projects. But even where redistribution appeared to be working with relative success, and indeed to be supported by white farmers living in the vicinity of those Africans newly purchasing land, those in the NGO sector complained that it was not fulfilling its promise. The African farmers to whom whites were giving support were those who “looked just like them”: that is the program was privileging those who were potentially or actually middle class – and who would under any circumstances been well-placed to become the owners of landed property - rather than helping the “poorest of the poor”.<sup>14</sup>

Such failures meant, in effect, that an even greater weight would be borne by the last remaining initiative: that of “tenure reform”. A great deal of intellectual energy and research has gone into the development of appropriate legal measures to safeguard the rights of those without secure tenure. The extent of this energy is considered justified, overall, by reference to the initiative’s importance in securing basic livelihoods for the rural “poor”: in practice, however, the fact that these “poor” are to be found in two separate geographical and social contexts has meant a bifurcation of the initiative. One of these contexts is the former homelands, held under a system of communal tenure; the other is white-owned farms.

The relative importance of these two contexts as focuses for the attention of “land reformers” has been a matter of some debate. The activists connected to the state programme, feeling strongly about the need to protect landholders in the former homelands from the arbitrary and tyrannical actions of chiefs, designed legislation intended to retain the flexibility of communal tenure as a “safety net for the poor” while somehow curbing the vagaries of chiefly power (Adams *et al* 2000; Claassens 2000).<sup>15</sup> But their efforts were stymied when, at the same time as shifting them out of state employ, the new Minister shelved their new Land Rights Bill. There are those in the NGO sector, however, who claim that the efforts of those bent on tenure reform in the former “homelands” were in any case misdirected. Their line of argument goes that few people in the former homelands effectively suffer insecurity

of tenure; that given earlier precedents it would be worse to interfere with the existing system than to respect, and maintain, the delicate balance which presently exists; and that it would be illogical to help people consolidate the little piece of land they already have when it is more urgent to ensure a wider, more general redistribution of land. Perhaps the most telling indication of this, they claim, is that their constituents – those asking them for most advice and help – include very few homeland-dwellers but large numbers of farm labourers or farm labour tenants in need of help, as well as some of the “land invaders” mentioned earlier.<sup>16</sup> The proper place for “tenure reform”, according to this argument, is where it is most needed: by those “landless” living on the farms and/or by those attempting to find some security on the fringes of cities.

It is through this process of ideological contestation, in which a vociferous sector within the land NGOs have adopted the more apparently “radical” position (so-called because of its propensity to support “land invasions” by both categories of people - though they have effectively been carried out more by the latter), that *this* subcategory of the landless came to carry such rhetorical weight at the landlessness workshop discussed earlier.

### **Reforming tenure on the farms**

Those living and working on South Africa’s white farms have long been considered the poorest, most underprivileged, and most disenfranchised section of the country’s populace. Initially unable to partake in, and later unable to benefit from, the kinds of urban-based group action – amongst trade unionists, members of youth organization, and the like – which are reputed to have played so large a role in the country’s democratization, farm workers have remained spatially divided and invisible, and hence under-resourced in economic, social and educational terms. Their plight is seen as deriving, in the main, from the extreme dependence of each farm worker on his own particular farmer/employer for both employment and for a place to live (Hall et al 2001).

Yet attempts to remedy this situation through the land reform programme do not seem to have helped. On the contrary: it is one of the great ironies of this programme that the legislation put in place by its protagonists to secure the land rights of farm workers – primarily the Extension of Security of Tenure Act (ESTA), passed on 28 November 1997 – has actually had the effect of worsening their

plight.<sup>17</sup> The act has attempted strictly to legislate the terms under which eviction from a farm can take place, but it has had the unintended consequence of informing farmers accurately about the steps they need to take in order to effect a “legal eviction”. The legislation is thought to have posed a threat to farm owners, and to have caused many who had been living for years in relative harmony with their workers suddenly to start mistreating or evicting them. The rate of evictions, and of atrocities such as beatings and other forms of maltreatment, spiralled steeply shortly before the act was passed and has continued to be high in the years since its passing.<sup>18</sup>

In recognition of this fact, much of the work of the legal and land NGOs in respect of farm labour has focused on attempting to protect such workers from eviction. The nature of the aid has been extensive: including ambitious schemes such as the nationwide “Farmworkers Project” which combined the expertise of the land and legal sector in monitoring, advising on, and representing workers in cases of eviction.<sup>19</sup> On a more modest and local scale, the only one of the provincial land NGOs which does, in its own right, offer advice and legal representation to farmworkers is Nkuzi, through its offices in the Northern Province (now renamed Limpopo) and Gauteng. The main body of its work involves liaising between farmers and the workers they have evicted or threatened with eviction. But its successes are few, mostly because conflicts have often progressed too far by the time Nkuzi has been informed. In those cases where they have been successful it was not intractable disputes between owner and worker, but rather minor errors or misunderstandings - relating perhaps to the death of the owner, the sale of the farm, or the advanced age of the farm worker - which led to the threatened eviction. In the case of Mr Beith of Vaalwater, for example, his dissatisfaction with and threatened eviction of an elderly employee were reversed once the Nkuzi field-worker intervened and provided translation and mediation. After meetings and discussions, Mr Beith agreed to provide 1 hectare plots to each of his workers so that they would have security even in the event of his death.<sup>20</sup> (more examples to be provided). But such cases of enlightened paternalism are few and far between.

The inevitable logic whereby an over-legislative apartheid state produced over-legislative reactions has been outlined above, as has the faith in such legislation expressed by such lawyer-activists as Geoff Budlender, who rejoiced that his brief period in government allowed him to enact laws whose application he would later be

in a position to enforce. This has, however, proved almost impossible in the particular circumstances in which farm labourers live. In essence, it has been precisely farm labourers' vulnerability, poverty and lack of rights which has made them unable to seek the protection of the law intended to reduce their vulnerability and poverty and to ensure their rights. Ironically, many of them have, on the contrary, been evicted from their former homes by means of that law. The DLA has been described as unresponsive to the pressure brought to bear upon it by its NGO watchdogs, and farm workers are said to be frustrated with how little the legal process can deliver.<sup>21</sup> The broad-based and principled safeguarding of "rights" which informed the land reform programme from the outset, and its greater ambition of ensuring the (re)establishment of citizenship, have thus been least effective on the farms.

At issue in the debates which rage about the need to reform or at least secure tenure for such people – for those who at best have been classified as farm tenants but who at worst feature as the "squatters" derided by Land Affairs Administrators – are questions which go to the heart of the rights of citizens and their entitlement to social welfare. These questions, although always refracted through the idiom of "land", concern the provision of resources far beyond it. At their most lofty, they are questions about equity and social justice: while at their more practical level they concern whether the care of the poor, and of the populace in general, should be the responsibility of the state, or whether paternalistic social structures can or should be relied upon to achieve such ends as they have done in the past.

The debate tends to proceed along the lines of a tug-of-war. For every instance of failure to devolve welfare and other functions to the realm of the private, there will be a proposal from those in the NGO sector that the state assume even greater and more far-reaching responsibility for, in part by exercising more far-reaching powers in respect of, the welfare of the poor. So, for example, the failure to ensure that people acquire secure rights on the farm of their employer was met by a challenge to the state to intervene in order to initiate a "meaningful transfer of land ownership to those who need it" (Euijen nd:68; Lahiff nd). Although it is beyond the reach of this paper to explore why "land", and the "right to land" have been placed at the centre of debates about welfare provision, it is intriguing to ask why "land" has come to acquire such discursive force.

Such contestations over welfare do not only pit the state *against* its NGO watchdogs. They can be seen in operation even *within* a single organization such as Nkuzi. Being constrained by practical and immediate considerations and by the need to serve its immediate constituency as discussed above, Nkuzi's efforts have tended at the local level to focus on brokering and negotiating deals with individual (and usually more enlightened) farmers like the Mr Beiths of this world. This amounts to an acknowledgment that welfare provision for the old and the unemployed can only be secured through the goodwill of those few private (white) property owners willing to bear this burden. Again, there is a superb irony in evidence here. Paternalism lay at the heart of farmer/labourer relationships during apartheid (Van Onselen 1996): it was intended that the end of this regime would bring equity and hence an escape from such relationships. But to gain freedom from paternalism, under present circumstances, is to become truly "landless" and hence without any basis for citizenship.

At the same time, there are those within the organisation and within the broader NGO coalition who insist on the need to sustain an unrelenting pressure on the state. Such pressure is exercised at the higher, less regionally-bounded levels of organisations, as in the recent case where Nkuzi, with the help of the Legal Resources Centre (LRC), took the Minister of Land Affairs Thoko Didiza to court. The action concerned the government's failure to provide adequate legal aid in rural areas, thus rendering African farm-dwellers effectively helpless to operationalise their rights under ESTA (the 1997 Extension of Security of Tenure Act) and hence to escape eviction. Nkuzi won the case in the Land Claims Court during 2001, but the practical and financial implications of this victory are still being worked out.

### **Bredell land invasions and the urban/rural divide**

(still to be written)

### **(Interim) Conclusion**

If, as discussed above, it is farm workers who are the most vulnerable country-dwellers and hence those most urgently in need of land (or at least tenure) reform, then why were there not more of them at the Workshop whose proceedings opened this paper? Why was it, rather, the Bredell-style land invasions which formed the rhetorical focus of proceedings (even though none of the invaders was

present to enunciate his point of view), while the majority of the “actual landless” who spoke were drawn from the ranks of those who, in principle if not in practice, were designed to have their land rights restored through the “restitution” arm of the land reform program?

The answers are complex. Among the “landless” at this workshop, former landowners, who were the most vociferous, have always been the “obvious” targets of land reform. Relative to other landholders, their property rights have been clearer-cut and somewhat easier to assert and retrieve. Indeed, it was their efforts to reclaim land which were in large part responsible to the initial growth of the “land NGOs” and hence, indirectly, the “legal NGOs” as well (James 2000, Palmer 2001). Farm workers, as stated above, are geographically and socially isolated: even NGO efforts to overcome this and to encourage their membership of a social movement have had limited success. The invaders of peri-urban land, such as those who briefly took up residence at Bredell, have been at the forefront of media attention and have attracted most notice from the DLA as well, in part because their actions bear a disturbing similarity to the Zimbabwe case. They seem to threaten illegality and unconcern for the rule of law. Most disturbing to those in the state, and being fostered by some elements within the NGOs, is the real or perceived “copycat” effect. Will “Zimbabwe-style” land invasions, now brought closer to home as “Bredell-style” land invasions, spread to others within the fledgling social movement and inspire the “landless”, however divergent their actual social origins and the potential uses to which they might put the land, to take the law into their own hands in order to secure it?

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## Endnotes

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<sup>1</sup> Siphwe Ngomane, Nkuzi, Pretoria, 3<sup>rd</sup> September 2001.

<sup>2</sup> Samantha Hargreaves, NLC, Johannesburg, 17<sup>th</sup> January 2001.

<sup>3</sup> *Ons mense word nog steeds uitgejaag. Jy werk tot jy's 60 jaar oud, dan kan jy gaan. Die regering se mense moet na die ongeskikte boere in slegte klere gaan, om werk te soek - dan gaan hulle sien hoe voel ons.* Speaker at the Landlessness=Racism conference, 30<sup>th</sup> August 2001.

<sup>4</sup> Dennis Brutus, Landlessness=Racism conference, 30<sup>th</sup> August 2001.

<sup>5</sup> Philip Mbiba, DLA, Nelspruit, 26<sup>th</sup> January 2001.

<sup>6</sup> This has been a pattern in respect of other matters such as health and education as well as land (see James 2002).

<sup>7</sup> Geoff Budlender, LRC, Johannesburg, 16<sup>th</sup> January 2001.

<sup>8</sup> *Ibid.*

<sup>9</sup> Tony Harding, Johannesburg, 21<sup>st</sup> August. Tony worked in the Department's Commission for the Restitution of Land Rights (CRLR).

<sup>10</sup> 'Class, not race, behind Dolny's departure' Howard Barrell, *Daily Mail and Guardian*, 7<sup>th</sup> January 2000.

<sup>11</sup> Geoff Budlender, LRC, Johannesburg, 16<sup>th</sup> January 2001.

<sup>12</sup> Andries Gouws of Fundile Afrika, Midrand, 4<sup>th</sup> September 1998; see also du Toit 2000.

<sup>13</sup> Maseleka Kgatla and Marc Wegerif, Nkuzi, Pietersburg, 21<sup>nd</sup> August 2001.

<sup>14</sup> Ruth Hall, personal communication.

<sup>15</sup> This raises questions about the extent of the state's responsibility for welfare. If the former homeland areas, by providing this "safety net", constitute one of the only forms of welfare whilst other state sectors seem bent on neo-liberal policies which sharpen society's fragmentation along class lines, are not these communal forms of ownership being made to carry too great a load? At issue here are forms of social interdependency between better- and worse-off country-dwellers which appear to have dwindled when apartheid planning brought a variety of earlier land-holding arrangements to an abrupt close.



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<sup>16</sup> Marc Wegerif, Nkuzi, Pietersburg, 21<sup>st</sup> August 2001, see also Claassens (1999:130) who acknowledges that there have been few evictions from communal tenure land: she states that it is the desire to benefit from development, whose donors usually require that rights in land are securely held, which lies behind communal tenure-holders to “upgrade” the tenure of their landholdings in the former homelands.

<sup>17</sup> Durkje Gilfillan, LRC, Johannesburg, 19<sup>th</sup> January 2001, Dan Mabokela, Nkuzi, Pietersburg, 22<sup>nd</sup> August 2001, Hall (2001), Euijen (nd)

<sup>18</sup> Dan Mabokela, Nkuzi, Pietersburg, 22<sup>nd</sup> August 2001; Maseleka Kgatla, Nkuzi, Pietersburg, 21<sup>st</sup> August 2001; South Consulting Service, 2000, Evaluation of Farmworkers’ Project (mimeo), p8.

<sup>19</sup> South Consulting Service, 2000, Evaluation of Farmworkers’ Project (mimeo).

<sup>20</sup> Dan Mabokela, Nkuzi, Pietersburg, 22<sup>nd</sup> August 2001.

<sup>21</sup> South Consulting Service, 2000, Evaluation of Farmworkers’ Project (mimeo), p21.